

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO
ALL CLASS ACTIONS

)
) MDL No. 1456
)

) CIVIL ACTION: 01-CV-12257-PBS
)

) Judge Patti B. Saris
)

) Chief Magistrate Judge Marianne B. Bowler
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)

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS'
REPLY TO BRISTOL-MYERS SQUIBB'S INDIVIDUAL MEMORANDUM
IN OPPOSITION TO CLASS CERTIFICATION**

I, Steve W. Berman, hereby declare that:

1. I am an attorney at law, licensed to practice in the State of Washington and admitted *pro hac vice* in this case. I am a member of Hagens Berman LLP, resident in its Seattle, Washington, office and am Co-Lead Counsel for the Plaintiffs in the above-captioned action.

2. This declaration is submitted in support of Plaintiffs' Reply to Bristol-Myers Squibb's Individual Memorandum in Opposition to Class Certification.

3. Attached as Exhibit 1 is a true and correct copy a Letter from Denise Kaszuba to First Data Bank dated October, 1993. (BMSAWP/0011250-51) **(Filed Under Seal)**.

4. Attached as Exhibit 2 is a true and correct copy of a letter from Denise Kaszuba to Wendy Jones, MEDISPAN. (BMSAWP/0011247) **(Filed Under Seal)**.

5. Attached as Exhibit 3 is a true and correct copy of a Letter from Denise Kaszuba to Edward Edelstein, First Data Bank. (BMSAWP/0030822) **(Filed Under Seal)**.

6. Attached as Exhibit 4 is a true and correct copy of a Fax Cover Sheet from First Data Bank. (BMSAWP/0005332-34) **(Filed Under Seal)**.

7. Attached as Exhibit 5 is a true and correct copy of a Fax Cover Sheet to Carol Flanagan from BMS re: Price Adjustment Notification dated September 12, 1997. (BMSAWP/0005339-45) **(Filed Under Seal)**.

8. Attached as Exhibit 6 is a true and correct copy of a BMS document titled "Selling in a Generic Marketplace." (BMS/AWP/000101005-10; pertinent pages only) **(Filed Under Seal)**.

9. Attached as Exhibit 7 is a true and correct copy of a BMS document titled "The Pharmaceutical Distribution Network Assuming Fictional Product at \$100 Monthly Cost." (BMS/AWP/000193520-23) **(Filed Under Seal)**.

10. Attached as Exhibit 8 is a true and correct copy of an e-mail from Sarah Karchere to Michael Difiore re: Definitions dated August 8, 2001. (BMS-AWP-000192746-50; pertinent pages only) **(Filed Under Seal)**.

11. Attached as Exhibit 9 is a true and correct copy of a BMS document titled "Etopophos Launch Plan" dated September 6, 1997. (BMSAWP/0011214-35; pertinent pages only) **(Filed Under Seal)**.

12. Attached as Exhibit 10 is a true and correct copy of a BMS document titled "Taxane Economics." (BMS/AWP/000157426) **(Filed Under Seal)**.

13. Attached as Exhibit 11 is a true and correct copy of a BMS document titled "Weekly Taxol Administration." (BMS/AWP/000157428) **(Filed Under Seal)**.

Further the declarant sayeth not. I certify under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 17th day of December, 2004, at Seattle, Washington.

By /s/ Steve W. Berman
Steve W. Berman
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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS' REPLY TO BRISTOL-MYERS SQUIBB'S INDIVIDUAL MEMORANDUM IN OPPOSITION TO CLASS CERTIFICATION** to be electronically filed with the Court pursuant to the December 16, 2004 Order and to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 17, 2004 a copy to Verilaw Technologies for posting and notification to all parties.

By /s/ Steve W. Berman

Steve W. Berman

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